

IN THE WESTERN AUSTRALIAN ELECTRICITY REVIEW BOARD

No      of 2025

B E T W E E N

ECONOMIC REGULATION AUTHORITY

Applicant

and

ALINTA SALES PTY LTD (ACN 089 531 984)

Respondent

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APPLICATION FOR ORDERS

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APPLICATION FOR ORDERS THAT ALINTA CONTRAVENED WEM RULES

1. Pursuant to regulation 39(1)(b) of the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* (WA) (**WEM Regulations**), the applicant, the Economic Regulation Authority (**ERA**), states that it is the “Authority” established by section 4 of the *Economic Regulation Authority Act 2003* (WA).
2. Pursuant to regulation 32(1) of the WEM Regulations:
  - (a) the ERA, considers that, in the period between 1 October 2023 and 30 June 2024, the respondent, Alinta Sales Pty Ltd (ACN 089 531 984) (**Alinta**), contravened each of, alternatively one or more of:
    - (i) clause 2.16A.1 (by force of clause 2.16A.2) of the then *Wholesale Electricity Market Rules* (operating as of 1 October 2023) (**WEM Rules**);
    - (ii) clause 2.16A.3 of the WEM Rules;
    - (iii) clause 2.16C.5 of the WEM Rules; and
  - (b) the ERA applies (pursuant to clause 2.13.36(d) of the WEM Rules) to the Electricity Review Board for the relief set out in paragraph 26 below in respect of the contraventions referred to in this paragraph 2 as detailed in paragraphs 21 to 24 below.

3. Alinta is a registered Market Participant (and a registered Market Generator) under the WEM Rules.
4. Pursuant to regulation 39(1)(d) of the WEM Regulations, the ERA states that Alinta's registered address is Grosvenor Place, Level 13, 225 George Street, Sydney, NSW 2000.
5. Pursuant to regulation 39(1)(d) of the WEM Regulations, the ERA provides details of the contraventions of the WEM Rules the ERA considers has occurred in paragraphs 7 to 24 below.
6. Pursuant to regulation 39(1)(e) of the WEM Regulations, the ERA specifies the nature of the orders sought in paragraph 26 below.

#### **BACKGROUND – WEM, RCM, BILATERAL CONTRACTS, STEM AND RTM**

7. The Wholesale Electricity Market (**WEM**):
  - (a) is the market established under section 122(1) of the *Electricity Industry Act 2004* (WA) and regulation 2 of the WEM Regulations in relation to the wholesale supply of electricity in the South West interconnected system (**SWIS**);
  - (b) operates as the energy, essential system services and capacity market for the SWIS, under which electricity generators and wholesale purchasers of electricity can purchase and sell electricity and generation capacity on a wholesale basis.
8. At all material times, the WEM Rules:
  - (a) provided for a Reserve Capacity Mechanism (or RCM) that ensures that sufficient capacity is installed to meet reliability requirements (WEM Rules, Chapter 4);
  - (b) permitted Market Participants to enter into contractual agreements with each other, namely, off-market Bilateral Contracts, to buy and sell energy and Capacity Credits through off-market mechanisms;
  - (c) provided for a Short Term Energy Market (or STEM) which is a daily forward market that allows Market Participants to trade around their bilateral energy

position enabling Market Participants to purchase electricity from or sell electricity to the Australian Energy Market Operator (**AEMO**) (WEM Rules, Chapter 6);

- (d) provided for a Real-Time Market (or RTM) which is a mandatory gross pool market, operated under Chapter 7 of the WEM Rules that provides a dispatch mechanism for energy and Frequency Co-optimised Essential System Services (or FCESS) to be provided by Registered Facilities in each Dispatch Interval based on submitted offer prices and quantities.

9. Frequency Co-optimised Essential System Services (or FCESS) include:

- (a) Regulation (namely, the service, measured in MW, of frequently adjusting the Injection or Withdrawal of a Facility in accordance with AEMO's centralised control scheme to assist in maintaining the SWIS Frequency) (WEM Rules, regulation 3.9.1);
- (b) Contingency Reserve (namely, the services, measured in MW, of holding response capability associated with a Facility in reserve so that the relevant Facility can rapidly adjust Injection or Withdrawal to assist in maintaining the SWIS Frequency after a Contingency Event) (WEM Rules, regulation 3.9.4);
- (c) Rate of Change of Frequency Control Service (namely, the service, measured in MWs, of providing Inertia which provides instantaneous response to slow down the rate of change of the SWIS Frequency) (WEM Rules, regulation 3.9.7).

10. In the period between 1 October 2023 and 30 June 2024, Alinta operated 4 Registered Facilities registered in the Scheduled Facility Class (**Alinta's Facilities**), namely:

- (a) ALINTA\_PNJ\_U1 and ALINTA\_PNJ\_U2 at Pinjarra; and
- (b) ALINTA\_WGP\_GT and ALINTA\_WGP\_U2 at Wagerup.

11. Under the WEM Rules, a Market Participant must make a Real-Time Market Submission relevantly for energy in respect of each of its Scheduled Facilities, for each 5-minute Dispatch Interval in the following 7 days (WEM Rules, clause 7.4.1(a)).

12. Under the WEM Rules, a Market Participant is required to make reasonable endeavours to ensure that its Real-Time Market Submission for each of its Registered Facilities represents the Registered Facility's ability to provide energy and Frequency Co-optimised Essential System Services in the Real-Time Market (WEM Rules, clause 7.4.2).
13. A Real-Time Market Submission must specify Price-Quantity Pairs for a Dispatch Interval that represent the quantities of energy or Frequency Co-optimised Essential System Services that can be supplied, the prices at which the Market Participant is prepared to supply them, and the technical parameters or constraints which AEMO must respect (for example, ramp rates) (WEM Rules, clauses 7.4.1; 7.4.40; 7.4.41; 7.4.42; 7.4.46).

**WEM RULES, CLAUSES 2.16A.1, 2.16A.2, 2.16C.1, 2.16C.5, 2.16C.6, AND 2.16D.1**

14. At all material times, under the WEM Rules:
  - (a) clause 2.16A.1 provided that a Market Participant must offer prices relevantly in its Real-Time Market Submissions that reflect only the costs that a Market Participant without market power would include in forming profit-maximising price offers in its Real-Time Market Submission;
  - (b) clause 2.16A.2 provides that the ERA must not determine that a Market Participant has engaged in conduct prohibited by clause 2.16A.1 unless the ERA has first determined that the Market Participant had market power at the time of offering the relevant prices relevantly in its Real-Time Market Submission.
15. Clause 2.16A.3(c) of the WEM Rules provides that a Market Participant must not engage in conduct relevantly in the Real-Time Market that has the purpose, or is likely to have the effect, of distorting or manipulating prices in the WEM.
16. Under the WEM Rules:
  - (a) clause 2.16B.1(a) required the ERA to identify a Portfolio of Registered Facilities which are owned by or registered to the same Market Participant;

- (b) clause 2.16B.1(b) required the ERA to publish a list specifying the name of each Registered Facility within each identified Portfolio;
- (c) clause 2.16C:
  - (i) has, from its heading, the evident purpose of identifying a “Market Power Test”;
  - (ii) requires the ERA to identify each Portfolio whose share of total maximum sent out capacity for all of its Registered Portfolios is equal to or greater than 10% of the total maximum sent out capacity of all Registered Facilities and defines these as a **Material Portfolio** (WEM Rules, clause 2.16C.1).

17. On 5 December 2023, the ERA published:

- (a) a list identifying Alinta’s Facilities as Registered Facilities within a Portfolio owned by Alinta;
- (b) the results of its calculations, concluding that Alinta’s Facilities are part of a Material Portfolio because the Portfolio’s percentage share of the total maximum sent out capacity of all Registered Facilities for the relevant determination period was 19%.

18. Under the WEM Rules:

- (a) clause 2.16C.5 provides that a Market Participant must not make an **Irregular Price Offer** that results in an inefficient market outcome;
- (b) the ERA must determine that a price is an **Irregular Price Offer**:
  - (i) when the ERA investigates potential breaches of clause 2.16A.1 (as the ERA is required to do under clauses 2.13.27 and 2.16C.6, having regard to the Offer Construction Guideline);
  - (ii) if the ERA considers that a price offered by a Market Participant in its Real-Time Market Submissions was inconsistent with the price that a Market Participant without market power would offer in a profit-maximising Real-Time Market (WEM Rules, clause 2.16C.6(d));

- (c) the ERA must develop, maintain and publish on its website an Offer Construction Guideline that relevantly provides guidance to Market Participants in relation to the price offer obligations under clause 2.16A.1, details how the ERA will assess prices offered under clause 2.16C.6 and permits the recovery of all efficient variable costs of producing the relevant electricity, including all costs incurred under long-term take-or-pay fuel contracts (WEM Rules, clause 2.16D.1);
- (d) the ERA must investigate and determine whether an Irregular Price Offer determined under clause 2.16C.6 has resulted in an inefficient market outcome (WEM Rules, clause 2.16C.7);
- (e) subject to clauses 2.16C.6 and 2.16C.7, the ERA must not relevantly take enforcement action under clause 2.13.36 for a breach of clause 2.16A.1 where the ERA has determined under clause 2.16C.7 that an Irregular Price Offer by a Market Participant has not resulted in an inefficient market outcome (WEM Rules, clause 2.16E.1);
- (f) in conducting an investigation under clause 2.16C.7, the ERA:
  - (i) must consider any changes to:
    - (A) a STEM Clearing Price (applicable to the Short Term Energy Market) or Reference Trading Price (applicable to the Real-Time Market);
    - (B) Energy Uplift Payments (applicable to the Real-Time Market);  
or
    - (C) the quantities of energy scheduled in respect of Market Participants in the STEM Auction, or the dispatch of Facilities in the Real-Time Market,

that are likely to have occurred as a result of the Irregular Price Offer;  
and
  - (ii) may consider any other matters the ERA considers relevant.

19. On 11 September 2023, the ERA published its Offer Construction Guideline.

**CONTRAVENTIONS OF WEM RULES, CLAUSES 2.16A.1, 2.16A.3, 2.16C.5**

20. From 30 July 2024, the ERA investigated potential breaches by Alinta of clauses 2.16A.1, 2.16A3 and 2.16C.5 of the WEM Rules during the period between 1 October 2023 and 30 June 2024.
21. The ERA has determined that Alinta had market power during the period between 1 October 2023 and 30 June 2024 in that:
- (a) during that period, where Alinta was obliged to make reasonable endeavours to ensure that its Real-Time Market Submissions reflected its reasonable expectation of the total capability of Alinta's Facilities to dispatch in each Dispatch Interval (WEM Rules, clause 7.4.2(a)), Alinta had the ability to price at a supracompetitive level in the Real-Time Market, including because:
    - (i) of Alinta's market share in the WEM (including 24% of the scheduled energy);
    - (ii) Alinta made price offers above the ERA's estimate of Alinta's efficient variable costs that could have been offered by a profit-maximising Market Participant without market power;
    - (iii) Alinta's price offers resulted in the observed market prices in the Real-Time Market being greater than they would have been but for Alinta's price offers;
  - (b) further or alternatively, during that period, Alinta had a Material Portfolio as set out in paragraphs 16 and 17 above.
22. The ERA has determined that, during the period between 1 October 2023 and 30 June 2024, in contravention of clause 2.16A.1 of the WEM Rules, Alinta offered prices relevantly in its Real-Time Market Submissions that reflected costs that a Market Participant without market power would not include in forming profit-maximising price offers in its Real-Time Market Submission in that:

- (a) Alinta's Real-Time Market Submissions included a gas input cost that was determined by reference to the price of gas Alinta could charge under its commercial and industrial retail gas contracts (**retail gas price input**) to small to medium commercial and industrial retail customers (**retail gas customers**) for average quantities of 53.6 TJ/annum;
- (b) Alinta's Real-Time Market Submissions did not deduct from the retail gas price input any amount to account for a retail margin that would reflect the costs that would be incurred and the risks that would be taken in selling gas to retail gas customers;
- (c) Alinta's Real-Time Market Submissions could have included, but did not include, a gas input cost by reference only to its efficient variable costs of producing the relevant electricity, including all costs actually incurred by Alinta under its long-term take-or-pay gas contracts to acquire gas for electricity generation (as contemplated by clause 2.16D.1(a)iii of the WEM Rules and permitted by section 4.3.2 of the Offer Construction Guideline);
- (d) further, in using the retail gas price input, Alinta's Real-Time Market Submissions:
  - (i) excluded the variable cost of transport of gas to retail gas customers and included the variable cost of transport to its Registered Facilities; but
  - (ii) did not exclude the pipeline capacity charge (i.e. fixed cost of transport) to retail gas customers so that there was a double input of the pipeline capacity charge (i.e. fixed cost of transport) (both to transport gas to retail gas customers and to transport gas to Alinta's Registered Facilities).

23. Further or alternatively:

- (a) by reason of the matters set out in paragraph 22 above, the ERA has determined that, during the period between 1 October 2023 and 30 June 2024, in contravention of clause 2.16C.5 of the WEM Rules, Alinta offered prices in its Real-Time Market Submissions that were inconsistent with the price a Market



Participant without market power would offer in a profit-maximising Real-Time Market;

- (b) the ERA has also determined that 256,554 Irregular Price Offers resulted in an inefficient market outcome in that these Irregular Price Offers resulted in an increase (in the order of \$66 million) in the total cost of electricity traded in the Real-Time Market.

- 24. Further or alternatively, by reason of the matters set out in paragraphs 22 and 23 above, the ERA has determined that, during the period between 1 October 2023 and 30 June 2024, in contravention of clause 2.16A.3(c) of the WEM Rules, Alinta engaged in conduct in the Real-Time Market that had the effect or likely effect of distorting prices in the WEM.
- 25. On 3 February 2025, the ERA notified Alinta that the ERA had determined Alinta had contravened clauses 2.16A.1, 2.16A3 and 2.16C.5 of the WEM Rules.

#### **RELIEF SOUGHT**

- 26. In accordance with regulation 33 of the WEM Regulations, the ERA seeks the following relief.
  - (1) A declaration that Alinta contravened clause 2.16A.1 of the WEM Rules in respect of Irregular Price Offers made during the period between 1 October 2023 and 30 June 2024.
  - (2) Further or alternatively, a declaration that Alinta contravened clause 2.16C.5 of the WEM Rules by making Irregular Price Offers which resulted in an inefficient market outcome during the period between 1 October 2023 and 30 June 2024.
  - (3) Further or alternatively, a declaration that Alinta contravened clause 2.16A.3 of the WEM Rules by engaging in pricing conduct that had the effect or likely effect of distorting prices in the WEM during the period between 1 October 2023 and 30 June 2024.

- (4) An order that Alinta pay a civil penalty for its contraventions of clauses 2.16A.1, 2.16A.3 and 2.16C.5 of the WEM Rules or alternatively one or more of those clauses.
- (5) An order that Alinta takes such action as the Electricity Review Board requires to prevent a reoccurrence of the contravention(s) of clauses 2.16A.1, 2.16A.3 and 2.16C.5 of the WEM Rules.
- (6) Any other orders that the Electricity Review Board thinks fit.
- (7) Costs.

DATED: 4 September 2025



Brahma Dharmananda SC



Long Pham